

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CHARLTON DEPRIEST, ET AL.

PLAINTIFFS

v.

Civil Action No. 3:10-cv-663(CWR)(FKB)

**WALNUT GROVE CORRECTIONAL
AUTHORITY, ET AL.**

DEFENDANTS

**MOTION TO TERMINATE PROSPECTIVE RELIEF GRANTED AND ORDERED BY
THE COURT'S APPROVAL OF THE CONSENT DECREE**

COMES NOW, Defendant, Marshall Fisher, in his official capacity as the Commissioner of the Mississippi Department of Corrections¹ (“Defendant”) and files the instant Motion to Terminate Prospective Relief Granted and Ordered by the Court’s Approval of the Consent Decree and would show unto the Court as follows:

1. This litigation began five years ago, with a federal complaint filed by Plaintiffs on November 16, 2010. *See Complaint, Docket Entry No. [1]*. After months of investigation and lengthy negotiations, a Consent Decree was approved and ordered by this Court on March 26, 2012. *See Consent Decree, Docket Entry No. [75-3]*.² Pursuant to the Consent Decree, monitors were appointed for the purpose of tracking compliance with the terms of the Decree. *See id. at § IV, ¶ 1*. The monitors are responsible for submitting reports to counsel every four months. *See*

¹ Under Federal Rule of Civil Procedure 25, the Defendant now should be Marshall L. Fisher, in his official capacity as the Commissioner of the Mississippi Department of Corrections.

² *See* Consent Decree, Docket Entry No. [75-3]. Defendant is moving to terminate only the Consent Decree directed at Walnut Grove, and not the separate Consent Decree governing the YOU facility (Docket Entry No. [75-1]).

id. This procedure outlined by the Decree has been followed, and the monitors now have submitted a total of six separate reports. *See Monitors' Sixth Report, Docket Entry No. [121].*

2. On August 6, 2014, Plaintiffs filed a motion to enforce and modify the Consent Decree, and they filed their updated memorandum in support on January 13, 2015. *See Motion, Docket Entry No. [106]; Amended Memorandum, Docket Entry No. [115].* After Plaintiffs filed their motion, the Court set an evidentiary hearing for April 1, 2015. Recently, the monitors submitted their Sixth Report to counsel, and it was filed with the Court on March 6, 2015. *See Monitors' Sixth Report, Docket Entry No. [121].*

3. Because there are no current and ongoing violations of any Federal right, and in light of Plaintiffs' motion to enforce and modify, Defendant files the instant Motion to Terminate the prospective relief approved and ordered by the Court in the Consent Decree pursuant to 18 U.S.C. § 3626(b)(1)(A) of the Prison Litigation Reform Act ("PLRA").³ In filing its motion to terminate, Defendant invokes the procedures set forth in 18 U.S.C. § 3626(e) governing motions affecting prospective relief, including Subsections (e)(1) concerning rulings on motions to terminate and (e)(2)'s automatic stay. Defendant also requests that the Court set a pre-termination evidentiary hearing pursuant to § 3626(b).⁴

4. In support of its Motion, Defendant relies on its Memorandum in support of this Motion, as well as the following document:

- a. Expert Report of Tom Roth, Exhibit "A."

³ Out of an abundance of caution, Defendant also urges this motion pursuant to Federal Rule of Civil Procedure 60. While § 3626(b)(1) is the appropriate statutory vehicle for termination of the Decree, as discussed in more detail in Defendant's Memorandum in Support, Defendant also moves under Rule 60 purely as an alternative argument.

⁴ As a point of clarity, Defendant waited to file the instant Motion until after the Monitors could complete their Sixth Report, which occurred the week prior to the filing of this motion, to allow the parties to be acting on current and complete information.

Respectfully submitted this the 13th day of March, 2015.

**BY: JIM HOOD, ATTORNEY GENERAL
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CERTIFICATE OF SERVICE

I, Krissy C. Nobile, do hereby certify that on March 13, 2015, I electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

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